

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1778 of 1987

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GANPATRAM M SHIKARI

Versus

STATE OF GUJARAT

Appearance:

MR VC DESAI for Petitioner
Ms. MANISHA LAVKUMAR for Respondent No. 1
NOTICE SERVED for Respondent No. 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 03/03/2000

ORAL JUDGEMENT

#. By this petition, the petitioner seeks quashing of the order, Annexure :C dated 4.6.85 passed by the Prant Officer, Gandhinagar, which is confirmed by order Annexure :D dated 11.6.86 passed by the Deputy Secretary,

Revenue Department, whereby the purchase of the land bearing survey no. 128/1 admeasuring acres 4.02 dianthus gunthas, block 224 situated at village Kundasan, Taluka and District Gandhinagar had been declared to be null and void being in contravention of Section 6 read with section 31 (b) of the Bombay Prevention of Fragmentation Act, 1956.

#. Learned counsel appearing for the petitioner does not dispute this fact that before making purchase on 6.12.79, no permission of the Competent Authority under the Act of 1947 had been obtained and the legal result is that the said purchase could have been declared as null and void.

#. On behalf of the petitioner, reliance is placed on a decision of this Court in Ranchhodbhai Lallubhai Patel v. State of Gujarat, reported in 1984 Vol. II G.L.R. 1225. It is pointed out that the sale deed in question executed on 6.12.79 and the notice under the provisions of the Act of 1947 was issued in the year 1984. It is submitted that as the action under the Act of 1947 was not taken within reasonable period, this Court should allow the petition as after taking possession of the land, petitioner has spent substantial amount on its development and his eviction from it would deprive him of the source of livelihood. Learned counsel appearing on behalf of the respondents submits that the delay in this case is not such as can be described as unreasonable. Thus, Court should not therefore interfere as there is a clear contravention of the provisions of the Act of 1947.

#. In the case of Ranchhodrai (Supra), learned Single Judge placed reliance on observation of Supreme Court in the case of Mansaram v. S.P. Pathak & others, Civil Appeal No. 1262(N) of 1978, decided on 28.9.83. The observations made are as under:

"Where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within a reasonable time. This is too well established to need buttressing by a precedent. However, one is readily available in State of Gujarat v. Patel Raghav Natha and others (1970) 1 SCR 335."

In the instant case, the said sale deed was executed on 16.12.79 and the proceedings under the Act of 1947 were initiated in June, 1984. Whether particular period of time is reasonable or not depends upon the facts of each individual case. In the instant case, it is not denied

that after the purchase, the petitioner remained on the land and is earning his livelihood. The deprivation of the land to him after such a long period of time will take away his source of livelihood. It may also be mentioned that the petition filed in the year 1987 has remained unanswered so far as the averments made in the petition are concerned. However, reliance is placed only on the two orders. The petitioner has throughout remained in cultivating possession of the land. Therefore, in view of the decision of Ranchhodbhai Lallubhai Patel (Supra), this Court holds that the action under the Act was taken after an undue delay of more than four and a half years.

#. Consequently, the petition succeeds and is allowed. The impugned orders dated 4.6.85, Annexure : C and dated 11.6.86 Annexure : D are hereby quashed. In the circumstances, I leave the parties to bear their own costs. Rule made absolute.

[D.M.DHARMADHIKARI, C.J.]

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